REMARKS

I.   Introductory Remarks

This is a full and timely response to the outstanding non-final Office Action mailed March 16, 2007. Through this response claims 1, 8, 9 and 10 have been amended. Claims 1–15 and 75–77 are pending in the present Application. In view of the following remarks, reconsideration and allowance of the Application and presently pending claims are respectfully requested.

II.   Interview Summary

Applicant through the attorney on the record and identified below thank Examiner Alexander J. Kosowski for granting a telephone interview on June 15, 2007.

Pursuant to 37 C.F.R. § 1.133(b), the following is submitted as a complete written statement of the reasons presented at the interviews as warranting favorable action. The following statement is intended to comply with the requirements of MPEP § 713.04 and expressly sets forth: (A) a brief description of the nature of any exhibit shown or any demonstration conducted; (B) identification of the claims discussed; (C) identification of specific prior art discussed; (D) identification of the principal proposed amendments of a substantive nature discussed; (E) the general thrust of the principal arguments; (F) a general indication of any other pertinent matters; and (G) the general results or outcome of the interview, if appropriate.

On June 15, 2007, the undersigned contacted the examiner to discuss the final Office Action of March 16, 2007 and the reasons that the rejection was maintained in view of the prior amendment. The examiner reiterated concerns regarding the use of the term appliance (read broadly as a central controller) in claim 8 rather than an end device and also indicated concerns with a determining step being the final step of the independent method claims. (A) No exhibits were shown or discussed; (B) the independent claims were discussed, in particular the usage of the term appliance was discussed; (C) the *Davis* patent was briefly discussed; (D) draft amendments were forwarded to the examiner prior to the interview, in particular draft amendments for independent claims 1, 8 and 10 were discussed; (E) the discussion centered around the end device making the decision regarding power load consumption and language to

allow the claims to better illustrate the nature of the end device decision making; the examiner suggested possible changes in the claim language and the claim amendments presented in this paper are consistent with the discussion; (E) the general thrust of the discussion was as set forth below in the next paragraphs; (F) no other matters were discussed; and (G) the examiner indicated that Applicants should amend the claims as discussed to more clearly indicate the nature of the end device decision making and that such changes together with new arguments could advance the prosecution positively.

The amendments herein and comments that follow are intended to be consistent with the discussion during the interviews.

In the event that the foregoing record is not considered complete and accurate, the examiner is respectfully requested to bring any incompleteness or inaccuracy to the attention of the undersigned.

III.   **Response to Rejection of Claims 1–15 and 75–77 Under 35 U.S.C. § 103(a)**

    A.   **Rejection of Claims 1–7, 9–15 75 and 77**

Claims 1–7, 9–15, 75 and 77 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Publication No. 2003/0233201 to Horst, *et al.*, hereinafter referenced as *Horst*, in view of U.S. Publication No. 2004/0113810 to Mason, JR., *et al.*, hereinafter referenced as *Mason*, and further in view of U.S. Patent No. 6,167,389 to Davis *et al.*, hereinafter referenced as *Davis*. Applicant respectfully traverses these rejections. Applicant has amended independent claims 1, 9 and 10, to more clearly indicate that the on-premise processor receives a message request from an end device that controls load activation, and to more clearly indicate that the end device is not necessarily a conventional or centralized load controller but rather is an end device that controls its own load by making decisions whether or not to voluntarily reduce load consumption, and thus, the discussion below addresses the Office Action arguments in the context of the amended independent claims 1, 9 and 10.

Independent claim 1, as amended, recites:

       1.   A method for energy management comprising:
receiving energy rating data at an on-premise processor transmitted by a
      distribution network from a host processor and storing the energy rating

> data in a memory, the rating data including a schedule pertaining to time and energy costs;
>
> ***receiving at the on-premise processor a message from an end device requesting energy rating data, wherein the message is communicated using a wireless communication link, the wireless communication link relaying the message through at least one other end device;***
>
> retrieving the energy rating data from the memory and sending a response message including the energy rating data using the wireless communications link from the on-premise processor to the end device;
>
> ***determining independently in the end device whether to generate an activation signal based at least in part on the energy rating data;*** and
>
> ***the end device allowing or reducing power load consumption according to the determination.***

(Emphasis added.)

Similarly, independent claim 10, as amended, recites:

> 10. A method for energy management comprising:
>
> ***receiving at an on-premise processor a first request message from an end device pertaining to energy rating data, wherein the first request message is communicated using a wireless communication link, the wireless communication link relaying the first request message through at least one other end device;***
>
> sending from the on-premise processor a second request message over a distribution network to the host processor, the second request message pertaining to energy rating data;
>
> receiving at the on-premise processor a first rating response message over the distribution network from the host processor, the first rating response message including energy rating data;
>
> sending from the on-premise processor to the end device a second rating response message using the wireless communication link, the second rating response message including the energy rating data;
>
> ***determining independently in the end device whether to generate an activation signal based at least in part on the energy rating data;*** and
>
> ***the end device allowing or reducing power load consumption according to the determination.***

(Emphasis added.)

Applicant respectfully submits that *Horst* in view of *Mason*, and further in view of *Davis* does not teach the emphasized features as highlighted in independent claims 1 and 10 above. More

specifically, the combination of *Horst, Mason* and *Davis* does not teach "receiving at the on-premise processor a message from an end device requesting energy rating data, wherein the message is communicated using a wireless communication link, the wireless communication link relaying the message through at least one other end device," "determining independently in the end device whether to generate an activation signal based at least in part on the energy rating data," and "the end device allowing or reducing power load consumption according to the determination" as highlighted in the amended independent claim 1 above. Further, the combination of *Horst, Mason* and *Davis* does not teach "receiving at an on-premise processor a first request message from an end device pertaining to energy rating data, wherein the first request message is communicated using a wireless communication link, the wireless communication link relaying the first request message through at least one other end device," "determining independently in the end device whether to generate an activation signal based at least in part on the energy rating data," and "the end device allowing or reducing power load consumption according to the determination" as highlighted in the amended independent claim 10 above.

It is acknowledged in the Office Action that *Horst* does not explicitly teach that an end device requests and receives the energy rating data and controls load activation itself. Neither does *Mason* remedy this deficiency.

It is asserted in the Office Action that *Mason* teaches an energy management system comprising groups of intelligent power meters at various sites communicating wirelessly with a host utility company and with other local meters, thus having the ability to transmit data and messages wirelessly between themselves or through each other to the remote host utility company. *Office Action, p.5.* It is further asserted in the Office Action that *Davis* teaches an energy management system whereby end devices request and receive pricing tier energy information and control load activations accordingly, and whereby energy rating data is sent over wireless communications channels. *Office Action, p. 5.* Applicant respectfully disagrees with these characterizations of the *Mason* and *Davis* references.

Mason appears *arguendo*, to teach an "automated meter reading system." *Mason, paragraph 7.* Specifically, *Mason* recites at paragraph 24:

> **Data may be communicated between meter 131 and data collector/meter** 121 over communication link 105. Similarly, data may be communicated between meter 141 and data collector/meter 121 over communication link 106. **Data provided to and collected at data collector/meter 121 from meters 131 and 141 may then be provided to remote location** 110 over communication link 104. Also, although not shown with reference to FIG. 2, it should be appreciated that **meter 131 and meter 141 may communicate directly with one another**, and that data collector/meter 121 may communicate to meter 131 through meter 141, using meter 141 as a repeater.

(Emphasis added.)

As indicated in the highlighted text above, *Mason* appears *arguendo*, to teach a meter reading system whereby data may be provided to a remote location directly from a meter or indirectly using other meters as repeater(s). There is however, no discussion regarding receiving a request for price tier information or other energy rating data from the meter(s), nor of the meters determining whether to generate activation signals based on decision making capabilities of the meter(s).

Davis appears *arguendo*, to teach randomizing the start up times of the controlled devices to minimize the strain of the power grid as each comes on line. *Davis, Abstract.* Specifically, in an illustrative example, the consumer allows the gateway "to control the operation of the consumer's thermostat and pool pump in accordance with the changes in the pricing tiers." *Davis, column 9, lines 43–47.* While *Davis* does allow for consumer override of the preset schedule (*see column 9, lines 47–50*), there is no mention of the end device requesting pricing tier data, determining whether to activate a power load reduction, and making a decision based on the provided information. Rather *Davis* appears to teach passive devices that are controlled by either a central controller or a consumer. There appears to be no decision making capacity in the *Davis* end devices.

Thus, the proposed combination of *Horst*, *Mason* and *Davis* does not teach the features of independent claims 1 and 10, as amended. Because independent claims 1 and 10 are allowable over the proposed combination, dependent claims 2–7, 11–15, 75, and 77 are allowable as a matter of law for at least the reason that dependent claims 2–7, 11–15, 75, and 77 contain all elements, features and limitations of independent claims 1 and 10. *See, e.g., In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

1685039 v01

In summary, it is Applicant's position that a case for obviousness has not been made against Applicant's claims 1–7, 10–15, 75, and 77. Therefore, it is respectfully submitted that each of these claims is patentable over *Horst* in view *Mason*, and further in view of *Davis* and that the rejection of these claims should be withdrawn.

Dependent claim 9 has been amended due to a typographical error and now correctly depends from independent claim 8, discussed in detail below.

B. Rejection of Claims 8 and 76

Claims 8 and 76 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Horst*, in view *Mason*. Applicant respectfully traverses these rejections. Applicant has amended independent claim 8 to more clearly indicate that an <u>end device requests energy rate information,</u> and to more clearly indicate that the end device is not necessarily a conventional or centralized load controller but rather <u>controls its own load by making decisions whether or not to voluntarily reduce load consumption,</u> and thus, the discussion below addresses the Office Action arguments in the context of the amended independent claim 8.

Independent claim 8, as amended, recites:

> 8.   A method for energy management, comprising:
> ***sending an energy rate request message from an end device to a host processor,***
>   wherein the request message is communicated using a wireless
>   communication link, the wireless communication link relaying the
>   message through at least one other end device;
> receiving at the end device an energy rate schedule from the host processor using
>   the wireless communication link, the energy rate schedule comprising a
>   first time period for a first usage rate and a second time period for a
>   second usage rate;
> ***determining independently in the end device whether to activate a power load***
>   based in part on the energy rate schedule and a current time; and
> ***the end device allowing or reducing power load consumption according to the***
>   ***determination.***

(Emphasis added.)

It is acknowledged in the Office Action that *Horst* does not explicitly teach that the request message is communicated using a wireless communication link, relaying the message

through other end devices. However, Applicant respectfully submits that *Horst* does not teach communicating an energy rate request message of any sort. It is further asserted in the Office Action that *Horst* is "capable of controlling load activation." *Office Action, p. 10.*

Horst appears *arguendo*, to teach a "controller in logical communication with energy consuming appliances ... permitting or curtailing energy supply to the appliances...." *Horst, Abstract.* Specifically, *Horst* recites that the "energy controller 410 **controls** a plurality of energy consuming devices within the residence including appliances and fixtures." *Horst, paragraph 37.* (**Emphasis added.**) Further, *Horst* recites at paragraph 40:

> It is contemplated that some **devices controlled by the energy controller** 410, such as lights, may not be inherently intelligent devices. However, **such devices may still be controlled by the energy controller** 410 by having an intelligent device associated with such device....

(Emphasis added.)

As indicated in the highlighted text above, *Horst* appears, *arguendo*, to teach a system in which the devices are controlled by an energy controller. There is no mention of the energy controller receiving a request for price tier information or other energy rating data from the individual device, nor of the device determining whether to generate activation signals based on decision making capabilities of the device. Neither does *Mason* remedy this deficiency.

As noted above, *Mason* appears *arguendo*, to teach an "automated meter reading system," whereby data may be provided to a remote location directly from a meter or indirectly using other meters as repeater(s). However, there appears to be no discussion regarding receiving a request for price tier information or other energy rating data from the meter(s), nor of the meters determining whether to generate activation signals based on decision making capabilities of the meter(s).

Thus, the proposed combination of *Horst* and *Mason* does not teach the features of independent claim 8, as amended. Because independent claim 8 is allowable over the proposed combination, dependent claims 9 and 76 are allowable as a matter of law for at least the reason that dependent claims 9 and 76 contain all elements, features and limitations of independent claim 8. *See, e.g., In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

In summary, it is Applicant's position that a case for obviousness has not been made against Applicant's claims 8, 9 and 76. Therefore, it is respectfully submitted that each of these claims is patentable over *Horst* in view *Mason* and that the rejection of these claims should be withdrawn.

1685039 v01

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-15 and 75-77, are in condition for allowance. Favorable consideration and allowance of the present Application and all pending claims are hereby courteously requested.

If, in the opinion of the Examiner, there are any issues that can be resolved by telephone conference, or if there are any informalities that may be addressed by an Examiner's amendment, the Examiner is invited to call the undersigned attorney at (404) 233-7000.

The Commissioner is hereby authorized to charge any fees due, or credit any overpayment, to Deposit Account No. **50-3537**.

Respectfully submitted,

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1685039 v01